

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARIJA PAUNOVIC and DUSAN
PAUNOVIC, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

OBI SEAFOODS LLC, an Alaska corporation,
and OCEAN BEAUTY SEAFOODS LLC, an
Alaska corporation,

Defendants.

NO. 2:21-cv-00884-MJP

**STIPULATED MOTION AND
~~[PROPOSED]~~ ORDER TO EXTEND
DEADLINES AND TRIAL DATE**

**NOTED FOR CONSIDERATION:
DECEMBER 8, 2023**

I. INTRODUCTION

The parties, by and through their counsel, hereby jointly stipulate and move to extend the Court's consideration of their cross-motions for partial summary judgment, to extend the briefing deadlines associated with those motions, and to extend the April 22, 2024, trial date in this matter three months to allow the parties an opportunity to resolve this litigation through mediation. Such additional time is also necessary for the notice administrator to send class notice after a lengthy delay in obtaining H-2B workers' mailing addresses from third parties.

II. BACKGROUND

A. Class Notice

On September 9, 2022, the Court certified the Pay Delay Class and the Quarantine Class and ordered Plaintiffs to present a proposed notice plan within twenty-one days. ECF No. 135 at

20. On September 30, 2022, Plaintiffs filed their proposed class notice plan. ECF No. 152. Defendants opposed the plan, arguing that the proposed notice misrepresented the scope of the Quarantine Class because it included workers at former Icicle Seafoods plants. ECF No. 157. The Court ordered further briefing on this issue, ECF No. 162, and on February 9, 2023, ordered that workers at former Icicle Seafoods plants starting on June 1, 2020, be included in the Quarantine Class and receive notice. ECF No. 175.

Through rolling productions over the following months, Defendants produced multiple Excel spreadsheets that combined to create a unified class list from which settlement administrator, SSI Settlement Services, would send notice to members of the Classes. However, in compiling this list, SSI and Class Counsel discovered that 420 Class members (nearly 20 percent of the Quarantine Class) had the same mailing address to a recruiting company in Maryland called United Work and Travel (UWT), through which Defendants recruited H-2B workers from outside the United States. Defendants approached UWT in September to obtain direct residential mailing addresses for these workers, but UWT refused to provide them. Defendants prepared a subpoena to force production of these addresses, but UWT agreed to comply without the subpoena being served. UWT produced the addresses in October, which were served on Class Counsel and thereafter sent to SSI.

On October 25, 2023, non-party Icicle Seafoods produced contact information for hundreds of Class members who had worked at former Icicle Seafoods plants, and for whom Defendants did not maintain records. Upon review, Class Counsel discovered that the addresses for 312 of these Class members also had mailing addresses to UWT in Maryland. Class Counsel immediately notified Icicle Seafoods' counsel who agreed to obtain the direct mailing addresses and produce them to Class Counsel. On December 1, Icicle Seafoods produced 153 of these addresses but has been unable to obtain the remaining 159 from UWT. Icicle Seafoods' counsel has told Class Counsel that the remainder will be produced but has not provided a time frame.

Once these final addresses are obtained from UWT, SSI will send class notice. There will then be a 60-day notice period for members of the Classes to opt-out or object. Following this

1 period, Plaintiffs' damages expert will need to update his report to reflect anyone who has opted
2 out of one or both Classes before trial.

3 B. Mediation

4 While the parties have periodically discussed the possibility of resolving this litigation
5 through mediation, those discussions failed to gain traction. However, on November 6,
6 Defendant OBI Seafoods announced that its CEO, Mark Palmer, and CFO, Anthony Ross, would
7 be retiring from the company. Following this change in leadership, the parties again broached the
8 possibility of settlement, and on November 21, agreed for the first time to pursue resolution of
9 the case through mediation. The parties are currently working to find a mediator agreeable to the
10 parties and to schedule mediation at the earliest possible date, likely late January or early
11 February.

12 C. Cross-Motions for Partial Summary Judgment

13 On November 22, Plaintiffs filed a motion for partial summary judgment seeking to strike
14 seven of Defendants' affirmative defenses. ECF No. 213. On the same date, Defendants filed a
15 motion seeking partial summary judgment as to Plaintiffs' quarantine claim. ECF No. 215. The
16 response deadline for these cross-motions is December 11, and reply briefs are due December
17 15. Both motions are noted for consideration on December 15.

18 III. ARGUMENT

19 The Court's scheduling order may be amended for good cause. Fed. R. Civ. P. 16(b)(4);
20 *Doe v. Trump*, No. 2:17-CV-00178-JLR, 2017 WL 1378504, at *1 (W.D. Wash. Apr. 11, 2017);
21 *see also* Dkt. No. 22 at 3 ("The Court will alter these dates only upon good cause shown[.]").
22 The Court's scheduling order may be modified "if it cannot reasonably be met despite the
23 diligence of the party seeking" the modification. *Johnson v. Mammoth Recreations, Inc.*, 975
24 F.2d 604, 609 (9th Cir. 1992) (quoting Fed. R. Civ. P. 16 advisory committee notes (1983
25 amendment)).

26 There is good cause to extend the Court's consideration of their cross-motions for partial
27 summary judgment and extend the response and reply deadlines associated with those motions

1 pending mediation, and to extend the trial date in this matter three months to July 22. For the first
2 time in this lengthy and contentious litigation, the parties have a promising opportunity to
3 resolve Plaintiffs' classwide claims through the use of a mediator. While previous attempts to
4 explore resolution through direct negotiation were unsuccessful, the recent change in
5 Defendants' corporate leadership brings a new prospect that this case can be resolved before the
6 parties and the Court are required to do so at trial. Because of this new prospect, there is also
7 good cause to extend the briefing deadlines and consideration of the parties' cross-motions for
8 partial summary judgment. Doing so would allow the parties to focus their energy on mediation
9 and would allow the Court to conserve judicial resources.

10 Finally, an extension of the trial date would allow adequate time for UWT to produce the
11 last remaining addresses for H-2B workers; for SSI to administer class notice; and for the 60-day
12 opt-out and objection period to pass. Even if UWT produces the remaining addresses in the
13 coming days and SSI is able to verify addresses, prepare the mailing, and get notice out within a
14 short time thereafter, the notice deadline would fall at the end of February, leaving very little
15 time for Plaintiffs' damages expert and the parties to adjust to the changing Classes before trial.

16 The parties propose to notify the Court regarding the outcome of settlement discussions
17 within three days of the set mediation date. If settlement discussions are unsuccessful, the parties
18 will file their response briefs to their cross-motions for summary judgment within fourteen days
19 and file their reply briefs within seven days thereafter, noting the motions for consideration on
20 the same date.

21 Given these circumstances, the Parties agree and stipulate, subject to the Court's
22 approval, to amend the scheduling order as follows:

Event	Original Deadline	Proposed Deadline
Notice to the Court regarding settlement discussions due	N/A	3 days after scheduled mediation
Response briefs to cross-motions for partial summary judgment due (if settlement discussions fail)	December 11, 2023	14 days after scheduled mediation
Reply briefs to cross-motions for partial summary judgment due (if settlement discussions fail)	December 15, 2023	7 days after the deadline to file response briefs
All motions in limine must be filed by and noted on the motion calendar no earlier than the third Friday thereafter and no later than the Friday before the pretrial conference	March 21, 2024	June 20, 2024
Agreed pretrial order due	April 9, 2024	July 9, 2024
Trial briefs and Proposed Findings of Fact and Conclusions of Law	April 9, 2024	July 9, 2024
Pretrial Conference	April 16, 2024, at Time TBD by Court	July 16, 2024, at Time TBD by Court
Trial Length	8 days	8 days
Bench Trial	April 22, 2024, at 9:00 AM	July 22, 2024, at 9:00 AM

STIPULATED TO AND DATED this 11th day of December, 2023.

TERRELL MARSHALL LAW GROUP PLLC

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IV. ORDER

After reviewing the files and records herein, and the Court having been fully advised, and for good cause shown, the Court hereby GRANTS the parties' Stipulated Motion to Extend Deadlines and Trial Date and sets the following new schedule:

Event	Original Deadline	New Deadline
Notice to the Court regarding settlement discussions due	N/A	3 days after scheduled mediation
Response briefs to cross-motions for partial summary judgment due (if settlement discussions fail)	December 11, 2023	14 days after scheduled mediation
Reply briefs to cross-motions for partial summary judgment due (if settlement discussions fail)	December 15, 2023	7 days after the deadline to file response briefs
All motions in limine must be filed by and noted on the motion calendar no earlier than the third Friday thereafter and no later than the Friday before the pretrial conference	March 21, 2024	June 17, 2024
Agreed pretrial order due	April 9, 2024	July 9, 2024
Trial briefs and Proposed Findings of Fact and Conclusions of Law	April 9, 2024	July 9, 2024
Pretrial Conference	April 16, 2024, at Time TBD by Court	July 16, 2024, at 1:00 PM
Trial Length	8 days	8 days
Bench Trial	April 22, 2024, at 9:00 AM	July 22, 2024, at 9:00 AM

IT IS SO ORDERED.

DATED this 11th day of December, 2023.



Marsha J. Pechman
United States Senior District Judge